Honda of America Mfg., Inc. *and* International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW). Case 8-CA-15050

November 25, 1981

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

Upon a charge filed on July 27, 1981, by International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), herein called the Union, and duly served on Honda of America Mfg., Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 8, issued a complaint on August 17, 1981, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and the complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on July 19, 1981, following a Board election in Cases 8-RC-12320 and 8-RC-12482, the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate;[1] and that, commencing on or about July 17, 1981, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative. On August 26, 1981, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On September 10, 1981, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on September 16, 1981, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter filed a response to the Notice To Show Cause.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

In its answer to the complaint and response to the Notice To Show Cause, Respondent asserts that the Union's certification was improperly issued in Cases 8-RC-12320 and 8-RC-12482 because the unit of boiler operators found appropriate by the Regional Director is inappropriate for bargaining. Respondent contends that the only appropriate unit would consist of all production and maintenance employees at its facility, including the boiler operators. Respondent admits that it has refused, and continues to refuse, to bargain with the Union, but alleges that it has no legal obligation to do so.

The General Counsel asserts that Respondent's answer raises no contentions other than those fully considered and rejected by he Board in the underlying representation proceeding and, since all other factual allegations of the complaint stand admitted in Respondent's answer, that there are no matters in issue requiring a hearing before an administrative law judge.

Our review of the record herein, including the record in Cases 8-RC-12320 and 8-RC-12482, discloses that the Union filed a petition for an election on April 27, 1981.[2] After a hearing, the Regional Director, on June 12, 1981, issued a Decision and Direction of Election in which he ordered that an election be held among the employees in the following appropriate unit:

> All boiler operators employed by the Employer at its Marysville, Ohio, facility, excluding all office clerical employees and professional employees, guards, and supervisors as defined in the Act, and all other employees.

Respondent filed with the Board a request for review, dated June 24, 1981, of the Regional Director's Decision and Direction of Election. The Board denied Respondent's request for review on July 8, 1981.

An election by secret ballot was conducted on July 10, 1981, in which four votes were cast for, and no votes were cast against, the Union. There

[1] Official notice is taken of the record in the representation proceeding, Cases 8-RC-12320 and 8-RC-12482, as the term "record" is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See *LTV Electrosystems, Inc.*, 166 NLRB 938 (1967), enfd. 388 F.2d 683 (4th Cir. 1968); *Golden Age Beverage Co.*, 167 NLRB 151 (1967), enfd. 415 F.2d 26 (5th Cir. 1969); *Intertype Co.* v. *Penello*, 269 F.Supp. 573 (D.C.Va. 1967); *Follett Corp.*, 164 NLRB 378 (1967), enfd. 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended. We note that the date of issuance of the certification is July 20, 1981, rather than July 19 as alleged in the complaint.

[2] An election petition concerning the same bargaining unit had been filed in Case 8-RC-12320 by International Union of Operating Engineers, Local Union 589, on November 14, 1980. The petitions were consolidated for the purpose of hearing.

were no challenged ballots. On July 20, 1981, the Acting Regional Director certified the Union as the exclusive representative for collective bargaining of the employees in the aforementioned unit.

In a letter to the Union dated July 17, 1981, Respondent stated that although it had not yet received the Certification of Representative from the Regional Director it would not consider such certification valid upon its issuance, and therefore Respondent would decline to bargain with the Union for the unit of boiler operators. Respondent has refused at all times since July 17, 1981, to bargain with the Union.[3]

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.[4]

All issues raised by Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding.[5] We therefore find that Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding. Accordingly, we grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent is and has been at all times material herein an Ohio corporation engaged in the manufacture and sale of motorcycles at its facility located in Marysville, Ohio. Respondent annually ships goods valued in excess of $50,000 directly from its Marysville facility to points located outside the State of Ohio.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The Representation Proceeding*

1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

> All boiler operators employed by the Employer at its Marysville, Ohio, facility, excluding all office clerical employees and professional employees, guards, and supervisors as defined in the Act, and all other employees.

2. The certification

On July 10, 1981, a majority of the employees of Respondent in said unit, in a secret-ballot election conducted under the supervision of the Regional Director for Region 8, designated the Union as their representative for the purpose of collective bargaining with Respondent.

The Union was certified as the collective-bargaining representative of the employees in said unit on July 20, 1981, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. *Respondent's Refusal To Bargain*

Commencing on or about July 17, 1981, and continuing at all times thereafter to date, Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that Respondent has, since July 17, 1981, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

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[3] In view of Respondent's anticipatory repudiation of its bargaining obligation, we find immaterial the absence of an allegation in the complaint that the Union made a formal request that Respondent meet with it for purposes of collective bargaining.

[4] See *Pittsburgh Plate Glass Co.* v. *N.L.R.B.*, 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

[5] We find no merit in Respondent's contention that its averred application of the "Japanese approach to labor relations" at its facility constitutes special circumstances warranting further consideration by the Board.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Honda of America Mfg., Inc., set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785 (1962); *Commerce Company d/b/a Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817; *Burnett Construction Company*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. Honda of America Mfg., Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), is a labor organization within the meaning of Section 2(5) of the Act.

3. All boiler operators employed by Respondent at its Marysville, Ohio, facility, excluding all office clerical employees and professional employees, guards, and supervisors as defined in the Act, and all other employees, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since July 20, 1981, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about July 17, 1981, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Honda of America Mfg., Inc., Marysville, Ohio, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), as the exclusive bargaining representative of its employees in the following appropriate unit:

> All boiler operators employed by Respondent at its Marysville, Ohio, facility, excluding all office clerical employees and professional employees, guards, and supervisors as defined in the Act, and all other employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its Marysville, Ohio, facility copies of the attached notice marked "Appendix."[6] Copies of said notice, on forms provided by the Regional Director for Region 8, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 8, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

[6] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All boiler operators employed by us at our Marysville, Ohio, facility, excluding all office clerical employees and professional employees, guards, and supervisors as defined in the Act, and all other employees.

HONDA OF AMERICA MFG., INC.